IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1380 OF 2005

Shantinath Rukkanna Nandrekar
(since deceased through L.Rs) ...Appellants

Vs.

Balu Nagappa Chougule & Ors. ...Respondents

Mr.N.V.Walawalkar for the Appellants
Mr.R.V.More for the Respondents.

CORAM: A.S.OKA, J.
DATED: MARCH 27,2006.

P.C.:

1. Heard Shri Walawalkar, learned Senior Counsel for the Appellants. The Appellants are the legal representatives of the deceased original Defendant No.4. There is a decree for partition and separate possession passed by the trial Court and confirmed by the Appellate Court. The original Defendant No.4 was claiming to be the purchaser of the suit property from one of the defendants. The submission of Shri Walawalkar is that while passing the decree for partition, the Trial court ought to have observed that the property which is sold to the defendant No.4 should be allotted to the share of the predecessor-in-title of the defendant No.4.

2. Shri More for the original Plaintiffs pointed out that the present Appellants had not challenged the decree passed by the Trial Court by approaching the first Appellate Court

and therefore, they are not entitled to maintain this Second Appeal.

3. There is a substance in the submission made by the Advocate for the original Plaintiffs. However, it must be noted here that the Trial Court has passed a preliminary decree for partition. So far as the partition of the agricultural land is concerned, the same will be effected by the authority under section 54 of the Code of the Civil Procedure, 1908. So far as the partition of the house property is concerned, the Commissioner appointed by the court will suggest the partition. While effecting partition by metes and bounds, the equities are to be adjusted. At that time, it will be always open to the Appellants to make appropriate request to the appropriate authority.

4. Subject to what is stated above, Second Appeal is dismissed with no order as to costs.

Judge.